IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.246 OF 2005
ALONG WITH
CRIMINAL WRIT PETITION NO.247 OF 2005

1. M/s Mega Packs & Anr ...Petitioners

V/s

BASF India Limited & Ors. ...Respondents.

Mr. P.L. Bhujbal for the petitioners in both the above Writ Petitions.

Mr. A.P. Mundargi with Mr. Vishal Maheshwari i/b M/s N. Shah & Himayatullah for respondent No.1 in both the above Writ Petitions.

Mr. D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.
DATE: 25th April 2005

P.C.:

1. Heard the learned Counsel for the petitioners and the learned counsel for respondent No.1.

2. The learned Counsel appearing on behalf of respondent No.1, on instructions from his client, submits that he would like to delete petitioner No.3 in Writ Petition No. 246 of 2005 from the complaint.

3. In view of the statement made by the learned counsel appearing on behalf of respondent No.1 on instructions from his client who is present in Court, the petitioner No.3 in Writ Petition No.246 of 2005 is

deleted from the array of accused in Criminal Complaint No. 1334/S/2004.

4. So far as Criminal Writ Petition Nos. 246 of 2005 and Writ Petition No. 247 of 2005 are concerned, even otherwise the facts in both these Petitions are similar and, therefore, they are being disposed of by this common order.

5. It is the contention of the petitioners that the respondent No.1 was supplying certain machinery to them and the account was opened in the ICICI Bank where certain credit facility was given to the petitioners and towards the security of the said facility, ICICI Bank had taken various securities. One of the securities was in the form of undated cheques which were given to ICICI Bank. It is the contention of the Petitioners that these cheques were used by the complainant after having procured them from the ICICI Bank and the said cheques were dishonoured. It is submitted that the said amount was not due and payable to the complainant. It is submitted that there was a dispute regarding the amount which was due and payable between the parties. Petitioners on the one hand contended that the respondent No.1 over-charged them and, therefore, no

amount was due and payable. The complainant on the other hand had contended in the complaint that various amounts were due and payable towards the goods which were supplied to the petitioners. The learned Counsel appearing on behalf of the petitioners has filed an additional compilation which is taken on record. The learned Counsel has invited my attention to the various Statements of Accounts and on the basis of the said Statements, it is sought to be argued that, in fact, no amount was due and payable. It is submitted that this complaint was filed only for the purpose of harassing the petitioners and to exercise pressure on them to pay the amount which was demanded by the complainant which, in fact, was not due and payable. The learned Counsel has also taken me through the terms and conditions imposed by the ICICI Bank in which reference is made to the undated cheques and the Demand Promissory Notes and also post-dated cheques equivalent to the individual limits. It is submitted that the limit in respect of both the accounts was Rs 2 lakhs and Rs. 8 lakhs and that was the exact amount which was mentioned in the said cheque deposited by the complainant. It is submitted that, therefore, this clearly showed that there was no existing debt or liability payable to the complainant. He submitted that the process which was issued was clearly an abuse

of the process of the Court.

6. The learned Counsel appearing on behalf of respondent No.1 submitted that the question as to whether there is an existing debt or liability and other questions which are raised by the petitioners cannot be gone into by this Court while exercising its inherent powers under section 482 of the Criminal Procedure Code. It is submitted that the presumption is raised under section 139 of the Negotiable Instruments Act regarding the debt and liability which has to be rebutted by the drawer of the cheque.

7. It is not possible to accept the submissions made by the learned Counsel for the petitioners. So far as the question of existing debt and liability is concerned, it cannot be decided by the High Court while exercising its inherent powers under section 482 of the Criminal Procedure Code. It is possible that the contentions of the Petitioners in this Petition may be correct and true yet, these contentions will have to be proved or the presumption raised under section 139 of the N.I. Act will have to be rebutted only after the evidence is adduced by both the parties. It is, therefore, not possible to interfere with the order of issuance of process at this stage.

Both these Writ Petitions, therefore, will have to be rejected.

8. It is clarified that merely because the Writ Petitions are rejected, that does not mean that the contentions raised by the Petitioners in this Petition are not accepted. All these contentions are kept open and the Trial Court shall consider the defence of the accused after giving proper opportunity to both the parties to lead evidence and then decide the questions involved in the case on merits and in accordance with law.

9. In the result, both the Criminal Writ Petitions are rejected. Petitioner No.3 in Writ Petition No. 246/2005 is directed to be deleted as accused from Criminal Case No. 1334/S/2004.

V.M. KANADE, J.